

BUREAU OF LAND MANAGEMENT

v.

HARRIS BROTHERS

IBLA 79-298

Decided July 31, 1979

Appeal from decision of Administrative Law Judge R. M. Steiner assessing \$2,441.60 in damages for grazing trespass. CA-01-77-01 (SC).

Affirmed.

1.     Grazing Permits and Licenses: Generally – Grazing Permits and Licenses: Trespass – Trespass: Generally  
Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.
2.     Administrative Authority: Trespass – Secretary of the Interior – Trespass: Generally

The Taylor Grazing Act, 43 U.S.C. §§ 315a-315r (1970), and other statutory authority empower the Secretary of the Interior to define what conduct constitutes a grazing trespass and whether or not an individual has committed a trespass.

3.     Grazing Permits and Leases: Trespass – Trespass: Measure of Damages

Where the evidence shows that the commercial rate for forage ranged from \$2.50 to \$9.50 per AUM, an Administrative Law Judge's computation of damages, using \$3.50 as the base figure, cannot be said to be unreasonable under 43 CFR 9239.3-2 (1976).

APPEARANCES: Julian C. Smith, Jr., Esq., Smith and Gamble, Ltd., Carson City, Nevada, for appellants; Burton J. Stanley, Esq., U.S. Department of the Interior, Office of the Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 26, 1979, by Administrative Law Judge R. M. Steiner (Judge) which assessed \$2,441.60 for 348.8 AUMs of forage consumed by appellants' trespassing cattle.

On appeal to this Board, the Harris Brothers (appellants) have made several challenges to the Judge's decision. First, they contend that the Judge "totally disregarded" the evidence they presented "and accepted evidence presented by the Government at face value even though the Government's witnesses were inconsistent with each other." Next, appellants contend they were denied due process of law in that the Judge relied on unproven prior trespasses in finding that the trespasses litigated before him were repeated trespasses. Third, appellants assert that the Secretary of the Interior has no authority to promulgate trespass regulations. Appellants also argue that they were not given proper notice of the trespasses and were therefore impaired in their ability to defend the charges. Finally, appellants contend that the Government failed to establish a reasonable value for the forage consumed by their livestock.

[1] We begin with the issue of repeated trespasses. Appellants' objection to the Judge's finding thereof is without merit. The record contains two Bureau of Land Management (BLM) trespass settlements from 1974 (Exhibits 22 and 23) which were accepted and paid. The decision states on this point: "Official notice may be taken of the prior trespass settlements, which are public records. M. P. Depaoli and Sons, I.G.D. 552 (1951); E. L. Cord, 64 I.D. 232 (1957)." Decision, p. 12. Past trespasses or trespass damages are considered in determining whether trespasses are repeated as a matter of course. See Eldon Brinkerhoff, 24 IBLA 324, 333-334 (1976); BLM v. Holland Livestock Ranch, 39 IBLA 272, 293-294 (1979).

[2] With respect to the Department's authority to promulgate trespass regulations, the decision appealed from states:

... Respondent's contention that the Department of the Interior lacks authority to adopt regulations to prohibit grazing trespass is frivolous and totally without merit. The authority of the Department of the Interior over public land is firmly established and well recognized. Bureau of Land Management v. Ross Babcock 32 IBLA 174 (1977) citing Cameron v. United States, 252 U.S. 450, 40 S.Ct. 410 (1920). Pursuant to the Taylor Grazing Act, 43 U.S.C. § 315a, the

Secretary of the Interior shall make such rules and regulations to regulate the occupancy and use of the Federal Range and "to preserve the land and its resources from destruction or unnecessary injury." Accord, Fernando Herrera v. Bureau of Land Management 38 IBLA 262 (1978). In conjunction with the enforcement powers authorized in 43 U.S.C. § 1201, the Department of the Interior has authority to enact the trespass regulations set forth in 43 CFR § 9239 et seq. See Ross Babcock, supra at 187.

Decision, p. 11. The Judge's summary needs no further elucidation and represents our view of the law.

[3] Evidence as to the commercial rate per AUM in the grazing area involved (Bishop resource area) ranged from \$2.50 to \$9.50. BLM agreed to \$3.50 and under 43 CFR 9239.3-2 (1976) the Judge employed this figure in his penalty computation. 1/ Appellants' allegation that a reasonable value was not established is therefore specious.

Appellants' remaining arguments, that insufficient notice was provided and that the Judge failed to consider their evidence are without merit. The determinations reached by the Judge are supported by reliable, probative, and substantial evidence. The evidence is discussed in considerable detail and is fairly evaluated. The conclusions of law are amply supported by citations to applicable precedents. Appellants have made no showings of error in the decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joseph W. Goss  
Administrative Judge

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1/ For repeated trespasses, the damages collectible by BLM are at twice the commercial rate.

